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# THE ANDHRA PRADESH GAZETTE

## PUBLISHED BY AUTHORITY

**PART V EXTRAORDINARY**

**No.3** AMARAVATI, WEDNESDAY, FEBRUARY 20, 2019 **G.1243**

## STATUTORY NOTIFICATIONS OF THE ELECTION COMMISSION OF INDIA AND OTHER ELECTION NOTIFICATIONS

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## NOTIFICATIONS BY GOVERNMENT

### GENERAL ADMINISTRATION (ELECTIONS) DEPARTMENT

--x--

ELECTION PETITIONS - E.P.No. 32 of 2014 - TRANSMISSION OF ECI's NOTIFICATION ALONGWITH THE ORDERS OF THE HIGH COURT OF ANDHRA PRADESH & TELANGANA.

***(Memo.No. 3215/Elecs.D/A1/2018-2, Office of the Chief Electoral Officer, Andhra Pradesh, Dated : 14-02-2019.)***

The following notification of the Election Commission of India, New Delhi, No. 82/ECI/TERR/AP-LA(32/2014)/2019, Dated : 29th January, 2019 / 9th Magha, 1940 (Saka).

**NOTIFICATION**

**No. 82/ECI/TERR/AP-LA(32/2014)/2019,-** In pursuance of Section 116C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order of the High Court of Andhra Pradesh and Telangana Dated : 27-11-2018 in Election Petition No. 32 of 2014.

**By Order,**

**S.K. RUDOLA,**
*Principal Secretary,*
*Election Commission of India.*

**GOPAL KRISHNA DWIVEDI,**
*Chief Electoral Officer,*
*Andhra Pradesh.*

**HIGH COURT OF JUDICATURE AT HYDERABAD**
**FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

TUESDAY, THE TWENTY SEVENTH DAY OF NOVEMBER
TWO THOUSAND AND EIGHTEEN

**PRESENT**
**THE HONOURABLE SRI JUSTICE T.SUNIL CHOWDARY**

**ELECTION PETITION NO: 32 OF 2014**

In the Matter of Election of a Member of Legislative Assembly 2014, 275-Madakasira (SC) Assembly Constituency, Ananthapur District

**Between:**

MOPURAGUNDU THIPPESWAMY, S/o. M.Hanumappa, R/o. D.No.3994, Laxmi Narasimha Nilayam, Behind SBI, Madakasira, Ananthapur District.

**...PETITIONER**

**AND**

1. Sri K.ERANNA, S/o. Mallappa, Police Station Road, Amarapur (V) & (M), Ananthapur District.
2. D.Indeevar, S/o. Panduranga Swamy, R/o.D. No. 10-2-86, Ambedkar Nagar, Hindupur, Ananthapur District.
3. K.Sudhakar, S/o. Kadurappa, R/o. D. No. 1-79, Karikera (V), Gudibanda Mandal, Ananthapur District.
4. Aswarth. B, S/o. Not known to the Petitioner, Occ: Not Known to the Petitioner R/o.Kodipalli (V), Agali (Mandal) Ananthapuramu District.
5. Dasari Venkateswarlu, S/o.Chandriah, R/o. D. No. 3-59, Negaturu (V), Nandikotukuru (M), Konidala (P), Kurnool District.
6. B.Satheesh Kumar, S/o. Anjinappa. B., R/o. D. No. 5-211, Ambedkar Nagar, Madakasira, Ananthapur District.
7. T.Dhanraj, S/o. Thimmappa, R/o. D. No. 7/150, H.T.Halli (V), Rolla (M) Ananthapur District.
8. H.Swamy Dinesh, S/o.M.Thippe Swamy, R/o. D.No. 15-120, Sainagar, College Road, Madakasir, Ananthapur District.
9. N.Shakthi Muni, S/o. Narasimhappa, R/o.Maddanakunta (V) & (P), Amarapuramuu (M), Ananthapur District.
10. M.R.Hanumanthu, S/o. Ch.Ramanjaneyulu, R/o. D. No. 5/191-A, New Kota, S.C. Colony, Ambedkar Nagar, Madkasira, Ananthapur District.
11. The Returning Officer, 275, Madakasira Assembly Constituency & Spl Deputy Collector (LA), PABR Stage-II, Ananthapur District.

(RR 2 to 11 are set exparte vide Court Order dated 01/11/2016)

**...RESPONDENTS**

Petition under Section 80, 80A, 81, 83, 84, 100(1) (d) and 101 of Representation of the Peoples Act, 1951, and the Rules made thereunder read with Rules to regulate the trial of Election Petitions under the representation issued by the High Court of A.P. praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to

a) Declare the election of the 1st respondent as elected form 275- Madakasira Assembly Constituency, Ananthapur District, in the Assembly General Elections held in the month of April, 2014 as illegal and null and void and set aside the same.

b) Declare the petitioner as duly elected from 275- Madakasira Assembly Constituency, Ananthapur District., in the elections held in the Assembly General Elections in the month of April, 2014

c) To award costs of the election petition

This petition coming on for hearing, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Sri T.Dayananda Rao, Advocate, for the petitioner and of Sri M.V.Raja Ram, Advocate, for the Respondent No.1.

The Court made the following Order :-

**THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY**

**ELECTION PETITION No.32 OF 2014**

**ORDER:**

This Election Petition is filed under Sections 80, 80A, 81, 83, 84 and 100(1)(d) and 101 of the Representation of the People Act, 1951 (for short, the R.P. Act), seeking to (a) declare the election of the first respondent from 275–Madakasira Assembly Constituency, Ananthapur District, State of Andhra Pradesh, in the Assembly General Elections held in the month of April, 2014 as illegal, null, void and set aside the same; and (b) declare the petitioner as duly elected from 275–Madakasira Assembly Constituency, Ananthapur District, State of Andhra Pradesh in the General Elections held in the month of April, 2014, with the following averments.

2. The Election Commission of India issued a press-note on 05.3.2014 to conduct General Elections-2014 for the Legislative Assemblies of different States. As per the press-note, the elections for the Legislative Assembly of the State of Andhra Pradesh were scheduled to be conducted in two phases i.e., on 30.4.2014 for Telangana area and on 07.5.2014 for Seemandhra area. In the Election Notification issued on 12.4.2014, the Election Commission of India fixed the following schedule to conduct elections in Seemandhra area:

| | |
|---|---|
| 19.4.2014 | Last date for filing of nominations |
| 21.4.2014 | Scrutiny of nominations |
| 23.4.2014 | Last date for withdrawal of candidature |
| 07.5.2014 | Date of polling |
| 16.5.2014 | Date of counting of votes |

In pursuance of the Notification, the petitioner filed nomination on 16.4.2014 for 275-Madakasira Assembly Constituency on behalf of

YSR Congress Party, whereas the first respondent filed nomination on behalf of Telugu Desam Party. Respondent Nos.2 to 10 also contested in the elections by submitting their respective nominations to the eleventh respondent.

3. The case of the petitioner is that the first respondent has filed Form-26 along with the nomination. He kept para-2 of Form-26 blank, without filling anything, which is in respect of his enrollment as a voter in a particular constituency. As per column Nos.5(i) and 5(ii) of Form-26, the first respondent has to disclose his criminal antecedents, but at column Nos.5(i) and 5(ii), it was mentioned as "nil". The first respondent also declared, in column No.9(b) of Form-26, that his wife is house-wife. The information furnished by the first respondent, in column Nos.5 and 9(b) of Form-26, is false, thereby he violated the statutory provisions. On coming to know about the suppression of material facts by first respondent, in his nomination and affidavit in Form–26, petitioner submitted a representation to eleventh respondent on the date of the scrutiny of nominations, stating that the first respondent was shown as accused No.5 in Crime No.133 of 2002 on the file of the State House Officer, Ponnampeta Police Station, Kodagu District, Karnataka State, for the offences punishable under Sections 120(B), 143, 144, 147, 323, 449 and 506(II) read with 149 of IPC. In the said crime, after completion of the investigation, the Investigating Officer laid charge sheet against the first respondent and others for the offences punishable under Sections 120(B), 143, 144, 147, 323, 447 and 506(II) read with 149 of IPC, and the same

was numbered as C.C.No.1002 of 2003, which was re-numbered as C.C.No.84 of 2010 on the file of the Court of Principal Civil Junior Division, Virajpet. After framing the charges and examining some of the prosecution witnesses in C.C.No.84 of 2010, the case was adjourned to 17.7.2014 for examination of L.Ws.11, 15 and 16. First respondent, who has been attending in the said case, has consciously chosen not to disclose the details of his criminal antecedents in his nomination and affidavit in Form-26. The petitioner also brought to the notice of eleventh respondent that the first respondent is accused in Crime No.76 of 2013 on the file of the Station House Officer, Madakasira Police Station, Ananthapur District, for the offences punishable under Sections 171-E and 188 of IPC. The first respondent should have disclosed the particulars of the said crime in his nomination and affidavit in Form-26, but consciously and deliberately failed to do so; thereby he has contravened the provisions of Section 33-A of the R.P. Act.

4. It is the further alleged that against column No.9(b) of Form-26, the first respondent has shown the status of his wife as house-wife and thereby suppressed the fact that she is working as Anganwadi Teacher/worker in C.D.P.O. Office, P.D. Kote Village, Dharmapura Post, Hiriyur Taluq, Chitra Durga District, Karnataka. The petitioner, under the Right to Information Act, has obtained the information about the nature of employment of the wife of first respondent vide proceedings in Sl.No.C.D.B.O.14-15/107, dated 25.6.2014.

5. Basing on the objections raised by the petitioner, eleventh respondent has issued notice in Ref.No.64/2014, dated 21.4.2014 directing the first respondent to submit his explanation, if any, at 14.30 hours on 21.4.2014. Petitioner has enclosed copy of F.I.R., in Crime No.133 of 2002 to his representation. First respondent failed to give any explanation to the eleventh respondent. Thereafter, vide endorsement in Ref.No.64/2014, dated 21.4.2014; eleventh respondent informed the petitioner that he cannot reject the nomination of the first respondent in view of Clause 6.10.1(iv), in Page-96, of the Guidelines issued by the Election Commission of India in the Handbook for Returning Officers for General Elections-2014 (hereinafter referred to as, the Guidelines). Improper acceptance of the nomination and Form-26 of the first respondent denied the voters of 275-Madakasira Assembly Constituency the opportunity of knowing the details of criminal antecedents of the first respondent. The voters were denied the opportunity of deciding and voting in favour of another contesting candidate, who has no criminal antecedents. Thus, the votes cast by the electorate of 275-Madakasira Assembly Constituency based on the belief that first respondent has no criminal antecedents have gone waste. It is submitted that Section 33(1) of the R.P. Act, mandates the filing of Nomination Paper, duly filling in all the columns in a prescribed manner, in order to treat it as a valid nomination.

6. Every voter has elementary right to know full particulars of the candidate, who may represent him in the Parliament/ Assemblies and such a right to get information is recognized as

being fundamental under Article 19(1)(a) of the Constitution of India. First respondent has failed in his duty of furnishing all material particulars and has done only a lip-service by filling in some of the columns as "Not applicable". This affidavit, which has substantive defects, is not at all an affidavit in the eye of law, more particularly under the Election Law. Non-disclosure of material information and necessary particulars in the nomination and the affidavit is clear violation of Section 33(1) of the R.P. Act.

7. In spite of cogent evidence produced by the petitioner in respect of the offences/crimes, in which first respondent was involved, eleventh respondent has improperly accepted the said defective nomination of the first respondent, which itself is a ground to declare the election of the first respondent as void; accordingly, it is liable to be set aside.

8. The cause of action for filing this Election Petition arose on 16.5.2014 when eleventh respondent has illegally declared the first respondent as duly elected from 275–Madakasira Assembly Constituency, Ananthapur District, which is within the jurisdiction of this Hon'ble Court. The result was declared on 16.5.2014 and hence this petition is filed within the period of 45 days as prescribed under the R.P. Act. A security deposit of Rs.2,000/- has been made by Lodgment Schedule dated 27.6.2014 as required under Section 117 of the R.P. Act and the Rules made thereunder. The court fee of Rs.20/- is paid herewith under Section 19 read with Schedule II and Article II(1)(2) of A.P. Court Fee and Suits Valuation Act, 1956.

9. Respondent Nos.2 to 11 remained *ex parte.*

10. First respondent filed counter denying all the material averments made in the Election Petition including his involvement in C.C.No.84 of 2010 (Crime No.133 of 2002) on the file of the Court of Principal Civil Junior Division, Virajpet, and the charges framed against him. At the time of filing of the nomination, the papers were entrusted to the local expert to fill-in, as the first respondent does not know how to fill in the same, and the expert had not mentioned about the pendency of criminal cases on omission and commission. The first respondent did not notice the same, in view of shortage of time, as his candidature was confirmed by Telugu Desam Party, and he received "B" Form, just before last date. Non-mentioning of the information relating to pendency of criminal cases against him is neither intentional nor wanton, except under the aforesaid circumstances. The wife of this respondent was an employee and at the time of the election notification, she stopped attending duties and submitted resignation; therefore, her employment was not mentioned in the Nomination Paper, but mentioned as house-wife. This is nothing to do with the elections. As every voter knew about the good behaviour of this respondent, he was elected by the voters as their choice. Non-mentioning of the information as to two criminal cases said to have been pending against this respondent and occupation of his wife is neither intentional nor has any ill-motive and it is no way either directly or indirectly hamper the election of this

respondent and more or less no criminal attitude is made out in the hearts of the public.

11. It is contended that accused No.4 in Crime No.133 of 2002 by name K.Veeranna, S/o. Mallappa, aged 40 years, is not this respondent. Accused No.4 in Crime No.133 of 2002 who is residing at Muddanagudu Village, Madakasira Taluk, Andhra Pradesh, and this respondent are residents of two different villages and there is no identity of their names and residences; therefore, nomenclatures of both of them are altogether different. Further, the name of accused No.5 therein is R.Satyanarayana; therefore, the allegation of the petitioner that first respondent was figured as accused No.5 in Crime No.133 of 2002 is not correct and it clearly shows that the petitioner, without verifying the charge sheet, made false allegations against this respondent.

12. Petitioner submitted a representation to eleventh respondent for which this respondent submitted explanation on 21.4.2014 stating that the nomination of this respondent cannot be rejected in terms of Clause 6.10.1(iv) of the Guidelines. The reply submitted by this respondent is not filed by the petitioner intentionally. The petitioner misled and misquoted the provisions of the R.P. Act and made false allegations against this respondent.

13. This respondent denies that he did not disclose material particulars in the nomination and affidavit in Form-26. He also denies that he did not comply with the Articles of the Constitution of India, the provisions of the R.P Act and the Rules made thereunder. The allegation that improper acceptance of nomination

and Form-26 of this respondent has materially affected the election is not true and correct. The offences under Sections 120-B, 143, 144, 147, 323, 447 and 506(II) read with 149 of IPC, alleged against first respondent and others in C.C.No.84 of 2010 would not come under the provisions of the R.P. Act or the Rules made thereunder, as those offences are not punishable with more than two years; therefore, the provisions of Section 33-A of the R.P. Act do not attract to this case. It is absolutely false to state that this respondent has been attending the Court in the above criminal cases and consciously chosen not to disclose the details of the case in his nomination and affidavit in Form-26. Suppression of material facts and non-disclosure of the criminal antecedents of this respondent neither materially affected the election process nor violative of the provisions of Sections 33(1) and 33-A of the R.P. Act; therefore, it does not make the election of first respondent as void under Section 100 of the R.P. Act.

14. The allegation of the petitioner that this respondent ought to have disclosed the particulars of Crime No.76 of 2013 in his nomination and affidavit is an omission and commission. Non-disclosure of the same is neither conscious nor deliberate. This respondent has not violated Article 19(1)(a) of the Constitution of India, as alleged by the petitioner. The offences referred in the Election Petition will not fall within the ambit of "heinous" crimes; therefore, it is clear that this respondent has not violated the provisions of the R.P. Act.

15. This respondent denies that the petition is filed by the petitioner within the period of 45 days as prescribed under the R.P. Act. Hence, the Election Petition is liable to be dismissed.

16. Basing on the above pleadings, this Court framed the following issues for trial:

> (1) Whether the 1st respondent suppressed the information relating to pendency of C.C. No.84 of 2010 on the file of the Civil Judge-cum-J.M.F.C., Ponnampeta of Karnataka State in Annexure IV of Nomination Form, thereby incurred disqualification to contest as Member of Legislative Assembly (MLA) of 275–Madakasira Assembly Constituency of Ananthapuram District?
>
> (2) Whether the 1st respondent intentionally and willfully suppressed the factum of employment of his wife in Form No.26, if so, whether his nomination is in accordance with law or not?
>
> (3) Whether the non-disclosure of particulars in the Annexure – IV filed by the 1st respondent along with nomination, amounts to undue influence of voters?
>
> (4) Whether this court can declare the petitioner as elected candidate from 275– Madakasira Assembly Constituency?
>
> (5) To what relief?
>
> **Additional Issue:**
>
> Whether the election of the first respondent is liable to be set aside?

17. To substantiate the stand, the petitioner examined himself as P.W.1 and got marked Exs.P.1 to P.18. Exs.P.19 to P.21 were marked during the cross-examination of R.W.1. To dislodge the case of the petitioner, first respondent examined himself as R.W.1, besides examining R.Ws.2 to 6 on his behalf, and got marked Exs.B.1 to B.3. R.W.2 is Notary by profession, who notarized Form–26 of the first respondent. R.Ws.3 to 6 are the persons, who said to have filled in Form–26 of the first respondent.

18. Heard Sri T. Dayananda Rao, learned counsel for petitioner and Sri MV Raja Raam, learned counsel for the first respondent. Perused the written arguments submitted by both the counsel.

19. A perusal of Ex.P.1, Form-7A issued by the Election Commission of India, clearly reveals that the petitioner and the first respondent contested in the General Elections-2014 for the Membership of 275-Madakasira Legislative Assembly Constituency on the tickets of YSR Congress Party and Telugu Desam Party respectively. Ex.P.1 further reveals that besides the petitioner and first respondent, nine other candidates contested for Membership of 275-Madakasira Legislative Assembly Constituency. Ex.P.2 is the election schedule. As per Form No.21-E issued by the Returning Officer-eleventh respondent, the petitioner secured 61,965 votes and the first respondent secured 76,601 votes. The first respondent was declared as elected Member of 275-Madakasira Legislative Assembly Constituency with a majority of 14,636 votes.

20. Before adverting to the main issues and additional issue, this Court is inclined to address the points incidentally raised by the learned counsel for both the parties as to (1) Whether the Election Petition is filed within the period of limitation? and (2) Whether the eleventh respondent illegally accepted the nomination filed by the first respondent?

21. First respondent has taken a specific plea, in the counter, that the Election Petition is barred by limitation. Learned counsel

for first respondent strenuously submitted that the Election Petition has to be filed within 45 days from the date of rejection of Ex.P.6–Objections filed by the petitioner; therefore, the Election Petition, which is filed beyond 45 days from the date of rejection of Objections, is not maintainable in law. *Per contra,* learned counsel for the petitioner strenuously submitted that the Election Petition can be filed within 45 days from the date of declaration of the results; accordingly, the Election Petition is filed within the period of limitation.

22. In order to appreciate the contention of learned counsel for the first respondent, it is apposite to refer Section 81 of the R.P. Act, which reads as follows:

> **81. Presentation of petitions.—**
> (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of these two dates.

23. A perusal of Section 81 of the R.P. Act reveals that Election Petition can be filed on one or more grounds specified in Sections 100(1) and 101 of the R P. Act by any candidate of such election or voter of that constituency. The Election Petition is filed under sub-clauses (i) and (iv) of Clause (d) of Sub-section (1) of Section 100 and Section 101 of the R.P. Act. A perusal of Section 81 of the R.P. Act, at a glance, mandates that an Election Petition has to be filed within 45 days from the date of declaration of the election of the returned candidate. In view of the same, if the submission of the learned counsel for the first respondent that Election Petition has

to be filed within 45 days from the date of the rejection or improper acceptance of nomination is accepted, Section 81 of the R.P. Act becomes redundant.

24. This court is placing reliance on the ratio laid down in **Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi**[1], wherein the Hon'ble apex Court held at para No.31 as under:

> **31. ... ... Section 81 prescribes a period of 45 days from the date of the election for presenting election petition calling in question the election of a returned candidate. After the expiry of that period no election petition is maintainable and the High Court or this Court has no jurisdiction to extend the period of limitation. An order of amendment permitting a new ground to be raised beyond the time specified in Section 81 would amount to contravention of those provisions and is beyond the ambit of Section 87 of the Act. ... ... .**

25. As per the averments made in the Election Petition, eleventh respondent declared first respondent as Elected Member of 275-Madakasira Assembly Constituency on 16.5.2014. In the counter, first respondent, in unequivocal terms, admitted the same. The record reveals that the Election Petition was filed before this Court on 28.6.2014 i.e., within 42 days from the date of declaration of election of first respondent.

26. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am unable to countenance the submission of the learned counsel for the first respondent that the Election Petition is not filed within the period of limitation. The material placed before the court clinchingly establishes that the petitioner filed the Election Petition within the period of limitation as prescribed under Section 81 of the R.P. Act.

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[1] 1987 Supp. SCC 93

27. The petitioner has taken a specific plea in the Election Petition that eleventh respondent has illegally accepted the nomination of first respondent, that itself is a valid ground to set aside the election of first respondent. First respondent has taken a stand, in the counter, that eleventh respondent over-ruled the objections of the petitioner by strictly adhering to Clause 6.10.1(iv) of the Guidelines; therefore, the election of first respondent cannot be set aside.

28. As per the testimony of P.W.1, first respondent is an accused in C.C.No.84 of 2010 on the file of the Court of Principal Civil Junior Division, Virajpet, for the offences punishable under Sections 120-B, 143, 144, 147, 323, 447 and 506(II) read with 149 of IPC. First respondent is accused in Crime No.76 of 2013 on the file of the Station House Officer, Madakasira Police Station, Ananthapur District, for the offences under Sections 171-E and 188 of IPC. He further deposed that he submitted Ex.P6–Objections to eleventh respondent, on the date of scrutiny of the nominations, seeking necessary action in the matter. After receipt of the Objections, eleventh respondent issued Ex.P.7–Notice directing first respondent to appear before him by 02.30 pm on 21.4.2014 and to submit explanation. Ex.P.8 is the translated copy of the Ex.P.7–Notice. As per the testimony of R.W.1, he submitted explanation to eleventh respondent. On receipt of the same, eleventh respondent overruled Ex.P.6–Objections, vide Ex.P9–Endorsement dated 21.4.2014, and accepted the nomination of first respondent. The fact remains that eleventh respondent, after

considering the submissions of both parties and basing on Clause 6.10.1(iv) of the Guidelines, overruled the objections of the petitioner on 21.4.2014 and consequently accepted the nomination of the first respondent.

29. The case of the petitioner is that first respondent did not disclose about his criminal antecedents in column Nos.5(i) and 5(ii) of Ex.P.4–Form–26. Learned counsel for the petitioner submitted that the petitioner submitted copy of F.I.R., in Crime No.133 of 2002 along with Ex.P.6-Objections. At the bottom of Ex.P.6, there is a column, "Enclosures". For one reason or the other, the petitioner did not choose to mention the details of the documents, if any, enclosed to Ex.P.6–Objections. The material placed before the Court falls short to establish that the petitioner submitted copy of F.I.R., in Crime No.133 of 2002 along with Ex.P.6–Objections. Section 36 of the R.P. Act deals with scrutiny and rejection of nomination. A duty is cast on the Returning Officer to scrutinize Nomination Papers filed by the contesting candidates meticulously in order to decide the validity or otherwise of the same. In order to resolve the issue, this Court is placing reliance on the decision in **Shaligram Shrivastava v. Naresh Singh Patel**[2], wherein the Hon'ble apex Court held at paragraph No.7 as follows:

> 7. .....**A nomination can be rejected on the grounds: (*i*) the candidate is not qualified or is disqualified for being chosen to fill the seat under any of the provisions, namely, Articles 84, 102, 173 and 191 of the Constitution or *under Part II of the Act (Section 8 of the Act falls in Part II)*; (*ii*) the Nomination Paper can also be rejected on failure to comply with the provisions of Section 33 or Section 34 of the Act; or (*iii*) the signature of the candidate or the proposer on the Nomination Paper is not genuine. Sub-section (4) of Section 36 provides that the Returning Officer shall not reject any Nomination Paper on the ground of any defect which is not of a substantial character.**

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[2] (2003) 2 SCC 176

30. In order to substantiate their respective submissions, learned counsel for both the parties placed reliance on the decision of Hon'ble apex Court in **Resurgence India v. Election Commission of India**[3], wherein it was held at paragraph Nos.18, 25 and 29.4 as follows:

> 18. It is clear that the Returning Officers derive the power to reject the Nomination Papers on the ground that the contents to be filled in the affidavits are essential to effectuate the intent of the provisions of the RP Act and as a consequence, leaving the affidavit blank will in fact make it impossible for the Returning Officer to verify whether the candidate is qualified or disqualified which indeed will frustrate the object behind filing the same. In concise, this Court in *Shaligram Shrivastava* v. *Naresh Singh Patel*, [(2003) 2 SCC 176] evaluated **the purpose behind filing the pro forma for advancing latitude to the Returning Officers to reject the Nomination Papers.**
>
> 25. Para 73 of the aforesaid judgment in *People's Union for Civil Liberties case* [*People's Union for Civil Liberties* v. *Union of India*, (2003) 4 SCC 399] nowhere contemplates a situation where it bars the Returning Officer to reject the Nomination Paper on account of filing affidavit with particulars left blank. Therefore, we hereby clarify that the above said paragraph will not come in the way of the Returning Officer to reject the Nomination Paper if the said affidavit is filed with blank columns. The candidate must take the minimum effort to explicitly remark as "NIL" or "Not Applicable" or "Not known" in the columns and not to leave the particulars blank, if he desires that his Nomination Paper be accepted by the Returning Officer.
>
> 29. *What emerges from the above discussion can be summarised in the form of the following directions*:
>
> 29.4. It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the Nomination Paper since such information is very vital for giving effect to the "right to know" of the citizens. **If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the Nomination Paper is fit to be rejected.** We do comprehend that the power of the Returning Officer to reject the Nomination Paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.

31. As per the principle enunciated in the cases cited supra, if any candidate fails to fill in all the columns of Form-26 in spite of the opportunity given to him, at the time of preliminary scrutiny,

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[3] (2014) 14 SCC 189

the Returning Officer can reject the nomination of such candidate. The Returning Officer has to exercise this power sparingly.

32. In the case on hand, first respondent filled in all the columns in para-5 of Form–26. Even against column Nos.5(i) and 5(ii) of Form-26, it is mentioned as "Nil". Moreover, as per Section 36(2) of the R.P. Act, the enquiry to be conducted by Returning Officer, while scrutinizing the nominations, is summary in nature. It may not be possible for the Returning Officer to conduct a roving enquiry as to whether any candidate is involved in criminal case(s) or not, unless certified copies of the relevant F.I.R., charge sheet or judgment are produced before him, at the time of the scrutiny of nominations. The petitioner, underneath the column "Enclosures" in Ex.P.6–Objections, did not mention the details of the documents, if any, enclosed to it. In the absence of production of necessary documents, it may not be possible for the eleventh respondent to come to a conclusion that the first respondent is an accused in criminal cases. In order to appreciate the contention of learned counsel for the petitioner, it is relevant to quote 6.10.1 of the Guidelines.

> **6.10. Grounds for rejection of Nomination Papers**
>
> **6.10.1 You must reject a Nomination Paper, if –**
> (iv) the prescribed affidavit has not been filed at all by the candidate, or [N.B. If the prescribed affidavit has been filed, but are found or considered to be defective or containing false information, the nomination should NOT be rejected on this ground].

33. A perusal of the record reveals that eleventh respondent scrupulously followed the procedure as contemplated under the R.P. Act as well as the Guidelines in accepting the nomination of first respondent. Viewed from any angle, I am unable to accede to

the contention of learned counsel for petitioner that eleventh respondent has illegally accepted the nomination of first respondent.

34. The learned counsel for the first respondent has drawn the attention of this Court to the decision in **Jagat Kishore Prasad Narain Singh v. Rajendra Kumar Poddar**[4], wherein the Hon'ble apex Court held at paragraph No.7 as follows:

> 7. ... ... The law requires that a true copy of the election petition should be served on the respondents. That requirement has not been either fully or substantially complied with. Therefore we have no doubt in our mind that the election petition is liable to be dismissed under Section 86 of the Act.

A perusal of the record reveals that petitioner has filed requisite number of copies of the Election Petition. One of the copies of the Election Petition was served on first respondent. It is not the plea of first respondent, in his counter, that copy of the Election Petition was not served on him. It is also not the case of first respondent that true copy of the Election Petition furnished to him by the petitioner is not *pari materia* with the Election Petition filed before this Court; therefore, this decision is no way helpful to the first respondent.

**Issue No.1**:

35. The learned counsel for the first respondent strenuously submitted that that the petitioner, at the time of filing of the Election Petition, has not strictly adhered to the mandatory procedure contemplated under Section 83 of the R.P. Act; therefore, the Election Petition is liable to be dismissed *in limine*. ***Per contra,*** learned counsel for the petitioner submitted that the

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[4] (1970) 2 SCC 411

petitioner has pleaded the material facts in the Election Petition by strictly adhering to the procedure as contemplated under Section 83 of the R.P. Act; therefore, the submission made by the learned counsel for first respondent has no legs to stand. Before considering the oral and documentary evidence available on record, I feel it appropriate to refer the case-law relied on by the learned counsel for the first respondent.

(i) **Laxmi Narayan Nayak v Ramratan Chaturvedi**[5], wherein the Hon'ble apex Court at paragraph No.5 culled out the following principles:

> 5. This Court in a catena of decisions has laid down the principles as to the nature of pleadings in election cases, the sum and substance of which being:
>
> (1) The pleadings of the election petitioner in his petition should be absolutely precise and clear containing all necessary details and particulars as required by law vide *Dhartipakar Madan Lal Agarwal* v. *Rajiv Gandhi* [1987 Supp SCC 93] and *Kona Prabhakara Rao* v. *M. Seshagiri Rao* [(1982) 1 SCC 442] .
>
> (2) The allegations in the election petition should not be vague, general in nature or lacking of materials or frivolous or vexatious because the court is empowered at any stage of the proceedings to strike down or delete pleadings which are suffering from such vices as not raising any triable issue vide *Manphul Singh* v *Surinder Singh* [(1973) 2 SCC 599: (1974) 1 SCR 52], *Kona Prabhakara Rao* v. *M. Seshagiri Rao* [(1982) 1 SCC 442] and *Dhartipakar Madan Lal Agarwal* v. *Rajiv Gandhi* [1987 Supp SCC 93] .
>
> (3) The evidence adduced in support of the pleadings should be of such nature leading to an irresistible conclusion or unimpeachable result that the allegations made, have been committed rendering the election void under Section 100 vide *Jumuna Prasad Mukhariya* v. *Lachhi Ram* [(1955) 1 SCR 608: AIR 1954 SC 686] and *Rahim Khan* v. *Khurshid Ahmed* [(1974) 2 SCC 660].
>
> (4) The evidence produced before the court in support of the pleadings must be clear, cogent, satisfactory, credible and positive and also should stand the test of strict and scrupulous scrutiny vide *Ram Sharan Yadav* v. *Thakur Muneshwar Nath Singh* [(1984) 4 SCC 649] .
>
> (5) It is unsafe in an election case to accept oral evidence at its face value without looking for assurances for some surer circumstances or unimpeachable documents vide *Rahim*

[5] (1990) 2 SCC 173

*Khan* v. *Khurshid Ahmed* [(1974) 2 SCC 660], *M. Narayana Rao* v. *G. Venkata Reddy* [(1977) 1 SCC 771: (1977) 1 SCR 490], *Lakshmi Raman Acharya* v. *Chandan Singh* [(1977) 1 SCC 423: (1977) 2 SCR 412] and *Ramji Prasad Singh* v. *Ram Bilas Jha* [(1977) 1 SCC 260] .

(6) The onus of proof of the allegations made in the election petition is undoubtedly on the person who assails an election which has been concluded vide *Rahim Khan* v. *Khurshid Ahmed* [(1974) 2 SCC 660], *Mohan Singh* v. *Bhanwarlal* [(1964) 5 SCR 12: AIR 1964 SC 1366] and *Ramji Prasad Singh* v. *Ram Bilas Jha* [(1977) 1 SCC 260].

(ii) **Punjab Urban Planning & Development Authority v. Shiv Saraswati Iron & Steel Re-Rolling Mills**[6], wherein the Hon'ble apex Court observed that, "10. ... ... *The plaintiff/ dppellant must succeed or fail on his own case and cannot take advantage of weakness in the defendant/ respondent's case to get a decree".*

(iii) **Santosh Yadav v. Narender Singh**[7], the Hon'ble apex Court held at paragraph No.15 as follows:

15. A word about the pleadings. Section 83 of the Act mandates an election petition to contain a concise statement of the material facts on which the petitioner relies. The rules of pleadings enable a civil dispute being adjudicated upon by a fair trial and reaching a just decision. A civil trial, more so when it relates to an election dispute, where the fate not only of the parties arrayed before the court but also of the entire constituency is at a stake, the game has to be played with open cards and not like a game of chess or hide and seek. An election petition must set out all material facts wherefrom inferences vital to the success of the election petitioner and enabling the court to grant the relief prayed for by the petitioner can be drawn subject to the averments being substantiated by cogent evidence. Concise and specific pleadings setting out all relevant material facts, and then cogent affirmative evidence being adduced in support of such averments, are indispensable to the success of an election petition. An election petition, if allowed, results in avoiding an election and nullifying the success of a returned candidate. It is a serious remedy. Therefore, an election petition seeking relief on a ground under Section 100(1)(*d*) of the Act, must precisely allege all material facts on which the petitioner relies in support of the plea that the result of the election has been materially affected. Unfortunately in the present case all such material facts and circumstances are conspicuous by their absence.

(iv) **Harsh Kumar v. Bhagwan Sahai Rawat**[8], wherein the Hon'ble apex Court held at paragraph No.8 as follows:

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[6] (1998) 4 SCC 539
[7] (2002) 1 SCC 160
[8] (2003) 7 SCC 709

> 8. ... ... The burden of proof of corrupt practice is very heavy on the appellant. The will of the people cannot be lightly set aside, though, of course, it is necessary to protect the purity of the election. In order to succeed on the ground of corrupt practice, the appellant had to lead cogent, reliable and satisfactory evidence. The standard of proof required is not of preponderance of probability but proof beyond doubt. ... ...

(v) **Ram Sukh v. Dinesh Aggarwal**[9], wherein the Hon'ble apex Court held paragraph No.13 as follows:

> 13. The phrase **"material facts"** has neither been defined in the Act nor in the Code and, therefore, it has been understood by the courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. (See *Mahadecrao Sukaji Shivankar* v. *Ramaratan Bapu*, (2004) 7 SCC 181. Broadly speaking, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are "material facts". Material facts are facts which, if established, would give the petitioner the relief asked for. But again, what could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down.

The following principles can be deduced from the above decisions:

(1) In the election petition, the petitioner may succeed or fail basing on strength or weakness of his case only;

(2) The burden of proof heavily lies on the election petitioner to establish his stand;

(3) The election of the returning candidate cannot be declared as void. basing on lacunae or weaknesses, if any, on his part; and

(4) The petitioner has to establish the corrupt practice alleged to have resorted to by the elected candidate or his election agent beyond all reasonable doubt.

36. Let me consider the facts of the case on hand in the light of the above principle of law.

37. The contention of the petitioner is that as per Section 33-A(1) of the R.P Act, every contesting candidate has to furnish the information as to whether he is arrayed as an accused in a pending criminal case wherein charge has been framed, or he has been convicted, by a competent court for the offence punishable

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[9] (2009) 10 SCC 541

with imprisonment for two years or more, but first respondent failed in doing so:

38. As per the averments made in the Election Petition, the first respondent is an accused in Crime No.76 of 2013 on the file of the Station House Officer, Madakasira Police Station, Ananthapur District. First respondent, in the counter, categorically admitted that he is accused in Crime No.76 of 2013. Hence, no issue was framed with regard to Crime No.76 of 2013.

39. As per the testimony of P.W.1, the first respondent is an accused in Crime No.133 of 2002 on the file of Ponnampet Police Station, Kodagu District, Karnataka State, for the offences punishable under Sections 120-B, 143, 144, 147, 323, 447 and 506(II) read with 149 of IPC.

40. The testimony of P.W.1 further reveals that the first respondent is an accused in Crime No.76 of 2013 on the file of the Station House Officer, Madakasira Police Station, Ananthapur District, for the offences under Sections 171-E and 188 of IPC. Ex.P.11 is the certified copy of FIR in Crime No.133 of 2002 and Ex.P.12 is the translated copy of the same. Ex.P.13 is the charge sheet in C.C.No.84 of 2010 on the file of the Court of Principal Civil Junior Division, Virajpet and Ex.P.14 is the translated copy of Ex.P.13. In Ex.P.11, the name of the accused No.8 is shown as 'Veeranna'. In Ex.P.13 charge sheet, the name of accused No.4 is shown as 'K.Veeranna'. As per the testimony of R.W.1, he is not an accused in C.C.No.84 of 2010. As per the testimony of R.Ws.3 to 6, the first respondent is not an accused in C.C.No.84 of 2010. A

perusal of Ex.P.15–F.I.R., and Ex.P.16–charge sheet reveals that the first respondent is the accused in Crime No.76 of 2013 on the file of the Station House Officer, Madakasira Police Station, for the offences punishable under Sections 171-E and 188 of IPC. Even as per the testimony of the first respondent, as R.W.1, he is the accused in Cr.No.76 of 2013. It is a settled principle of law that admitted facts need not be proved.

41. The learned counsel for the first respondent submitted that wrong mentioning of the serial number of the accused in the Election Petition itself clearly indicates that the petitioner has not complied with the mandatory provisions of Section 83 of the R.P Act. Whether the first respondent is an accused in Crime No.133 of 2002 or not is a material fact? The petitioner has specifically mentioned in the Election Petition that the first respondent is accused No.5 in Crime No.133 of 2002 corresponding to C.C.No.84 of 2010, which is a material fact. By taking such a plea and by producing Ex.P.11-F.I.R., Ex.P.13-charge sheet, and Exs.P.19 to P.21 proceeding sheets in C.C.No.1002 of 2003 corresponding to C.C.No.84 of 2010, the petitioner has complied with the procedure as contemplated under Section 83 of the R.P. Act. Mere discrepancy in serial number of the accused itself is not a valid ground to dismiss the Election Petition in *limine*, without taking into consideration the substance of the averments made in the petition as well as the oral and documentary evidence available on record.

42. In the cross examination, R.W.1 denied the suggestion that Exs.P.19 to P.21 proceedings sheet in C.C.No.1002 of 2003 bear his signature. A perusal of Ex.B.2 certified copy of judgment in C.C.No.84 of 2010 on the file of the Court of Principal Civil Junior Division, Virajpet reveals that accused Nos.1 to 11 therein were found guilty and convicted for the offences punishable under sections 143, 144, 147, 447 and 323 read with 149 of IPC. However, accused Nos.1 to 11 were released under the provisions of Probation of Offenders Act. In C.C.No.84 of 2010 the name of the accused No.4 is shown as "K.Veeranna".

43. The predominant contention of the learned counsel for the first respondent is that the first respondent is not accused No.4 in C.C.No.84 of 2010. In view of the specific stand taken by the first respondent, the burden of proof lies on the petitioner to establish that the first respondent is accused No.4 in C.C.No.84 of 2010. The learned counsel for the petitioner submitted that the averments made in the counter by themselves reveal that the first respondent is accused No.4 in C.C.No.84 of 2010.

44. In the Election Petition, the name of the first respondent is shown as "K.Eranna". In Ex.P.11–F.I.R., the name of the accused No.8 is shown as "Veeranna". In Ex.P.14–Translated copy of the charge sheet, the name of accused No.4 is shown as "K.Veeranna". In Ex.B2–certified copy of judgment also the name of the accused No.4 is shown as "K.Veeranna". The first respondent hails from Ananthapur District of Andhra Pradesh State. Crime No.133 of 2002 was registered on the file of the Station House Officer,

Ponnampet Police Station of Karnataka State. The trial in C.C.No.84 of 2010 was conducted by the Court of Principal Civil Junior Division, Virajpet in the State of Karnataka. In the same area, the name of a particular individual may be pronounced in different ways. Likewise, in the same area, the name of the same person may be written with different spellings. In such circumstances, the possibility of writing the name of the same individual with different spellings in different States cannot be ruled out completely. The dialect may be different from region to region and State to State. The dialect may be the root cause for writing the name of an individual with different spellings. Since the crime was registered in the State of Karnataka, and the accused belongs to the State of Andhra Pradesh, the possibility of writing his name as 'Veeranna' instead of 'Eranna' cannot be ruled out completely. If the identification of the person is possible with some other mode, mere difference of spelling in the name would be of no consequence. Merely because the name of the same individual is written with two different spellings that itself is not a valid ground to discard the version put forth by the petitioner without considering the oral and documentary evidence available on record. If the entire case of the petitioner rests only on Ex.P.11-F.I.R., and Ex.P.13-charge sheet, then there may be some justification in the contention of the first respondent.

45. In order to come to a just and reasonable conclusion, the court has to take into consideration the other attending circumstances also. Father's name of accused No.8 in Crime

No.133 of 2002 and accused No.4 in C.C.No.84 of 2010 is shown as Mallappa. In the Election Petition also, father's name of the first respondent is shown as Mallappa, which is tallying with the father's name of the accused No.4 in C.C.No.84 of 2010.

46. As per the recitals of Ex.P.11 FIR and Ex.P.13 charge sheet, accused No.8 and 4 respectively is native of Muddanagudu Village, Madakasira Taluq, Ananthapur District, Andhra Pradesh. The first respondent is a native of Amarapuram village and Mandal of Ananthapur District. In the State of Andhra Pradesh, the Taluq system was abolished in the year 1987 by introducing Mandal system. Even as per the oral testimony of R.Ws.1 to 6, Maddanakunta Village is situated in erstwhile Madakasira taluq of Ananthapur District. Their testimony further reveals that the father of the first respondent hails from Maddanakunta village. It is the contention of the first respondent that there is no village by name Muddanagudu in erstwhile Madakasira constituency. In the cross examination, R.W.1 clearly admitted that his father hails from Maddanakunta village. As observed earlier, mere mentioning of wrong spelling of a village name itself is not a valid ground to believe the version put forth by the first respondent. In the cross-examination R.W.1 clearly admitted that distance between Amarapuram and Maddanakunta is 3 KMs. He denied the suggestion that the distance between Amarapurm and Maddanakunta is 1½ KMs. It is the case of the first respondent that he is resident of Amarapuram village and mandal of Anantapur district. The distance between Maddanakunta and

Amarapurm villages is 3 KM even as per the testimony of R.W.1. It is the case of the petitioner that he is native of Huduguru village. For the reasons best known to the first respondent, he denied the suggestion that the distance between Maddanakunta and Huduguru village is 1 KM. Maddanakunta village is within the limits of Amarapuram Mandal of erstwhile Madakasira Taluq. The description of the accused No.4 in C.C.No.84 of 2010 is almost identical to the name, native place and father's name of the first respondent. During the pendency of the Election Petition, the first respondent filed E.A.No.11 of 2017 under Order VI Rule 16 read with Section 151 CPC seeking to strike off the pleadings in Para Nos.5 to 11 of the Election Petition No.32 of 2014. He also filed E.A.No.34 of 2017 under Order VII Rule 11 read with Section 151 CPC seeking to reject the Election Petition No.32 of 2014. This Court dismissed both the applications on 28.4.2017. In cross examination R.W.1 admitted that Special Leave Petitions filed by him on the file of the Hon'ble apex Court challenging the order passed by this Court in E.A.Nos.11 and 34 of 2017, dated 28.4.2017 were dismissed. This court is very much conscious that in an Election Petition, the petitioner has to establish his case by preponderance of probabilities. The father's name, native place and native district of the first respondent is tallying with the father's name, native place and native district of accused No.8 in Crime No.133 of 2002 and accused No.4 in C.C.No.84 of 2010. Of course, the name is almost tallying with variation in spelling.

47. In order to appreciate the contention of the first respondent, it is apposite to extract the relevant portions in para Nos.4 and 7 of the counter, which are as follows:

> 4. ".... At that time of filling the Election application, it was entrusted to the local expert to fill up the election petition as I do not know how to fill up and also in view of urgency and **he had not mentioned about pending criminal cases on omission and commission** which was not noticed by this respondent in view of short time and as I got confirmation from the Telugu Desam Party and "B" form which I received just before the last date and hence, non-mentioning of the said cases are neither intentional nor wanton except under the aforesaid circumstances only.... ..... For not mentioning **the said two cases and the occupation is neither intentional nor having any motive** and it is no way either directly or indirectly hamper the election and more or less no criminal attitude is made out in the hearts of the public.
>
> 7. .... **The offences alleged against the 1st respondent herein and other accused in the said FIR are under Sections 120-B, 143, 144, 147, 323, 449 and 506(2) IPC read with 149 IPC.** On perusal of the said FIR and relevant sections reveals that the offence alleged do not come under the provisions of R.P Act 1951 and its Rules..."

48. In para No.4 of the chief examination affidavit, the first respondent mentioned as follows:

> 4. ".... **I have not mentioned about pending criminal cases in which my name is mentioned either on omission or commission** which was not noticed by me in view of short time and as I got confirmation from the Telugu Desam Party and "B" form which I received just before the last date and hence, non-mentioning of the case relating to me are neither intentional nor wanton except under the aforesaid circumstances only. It is made to understand that it is not mentioned as it was not fit within the ambit of Act and whether it was more than two years or more etc."

49. The first respondent in the counter as well as in his chief examination affidavit categorically admitted the pendency of above referred two criminal cases against him; therefore, such admission is binding on him. In cross-examination, R.W.1 denied the suggestion that he is an accused in C.C.No.84 of 2010. As per the testimony of R.Ws.3 to 6, the first respondent is not an accused in any criminal case by the time of filing of Nomination Paper. In the cross examination, these witnesses denied the suggestion that the first respondent is an accused in C.C. No.84 of 2010 and Crime

No.76 of 2013. However, in view of the admission made by the first respondent himself, no credence can be attached to the oral testimony of R.Ws.3 to 6. In view of the categorical admission made by the first respondent, I have no hesitation to hold that the first respondent is an accused in C.C.No.1002 of 2003, which was re-numbered as C.C.No.84 of 2010 on the file of the Court of Principal Civil Junior Division, Virajpet of State of Karnataka and in Crime No.76 of 2013 on the file of the Station House Officer, Madakasira Police Station, Ananthapur District by the time of filing of Nomination Papers in the year 2014.

50. A perusal of Ex.B.2 reveals that in C.C.No.1002 of 2003 corresponding to C.C.No.84 of 2010, after framing of charges, the trial was commenced on 13.6.2005 and completed on 18.8.2014. The recitals of Ex.B.2 clearly reveals that the charges were framed much prior to 2005. The accused therein faced trial for the offences punishable under sections 143, 144, 147, 323, 447 read with 149 of IPC. The punishment prescribed for the respective offences is as follows:

| Section | Period of punishment |
|---|---|
| 143 IPC | Six months |
| 144 IPC | UP to 2 years |
| 147 IPC | UP to 2 years |
| 323 IPC | UP to 1 year |
| 447 IPC | UP to 3 years |
| 149 IPC | Punishable with the main offence |

51. So, as seen from the above table, the punishment prescribed against the above respective offences is ranging from six months to three years. The first respondent himself has admitted that he is an accused in Crime No.76 of 2013 on the file of the Station House Officer, Madakasira Police Station, Ananthapur District for the

offences punishable under Sections 171-E and 188 of IPC. The punishment prescribed for the said offences is:

| Section | Period of punishment |
|---|---|
| 171-E IPC | Up to 1 year |
| 188 IPC | UP to 1 month |

52. The learned counsel for the first respondent submitted that if the offence is punishable less than two years, the contesting candidate need not disclose the same in Form-26 unless the court has taken cognizance of the offence. There is no mention in the counter or the chief examination affidavit of R.W.1 that he did not mention in Form-26 about the Crime No.76 of 2013 on the file of the Station House Officer, Madakasira Police Station, Ananthapur District as the concerned Court has not taken cognizance of the offence.

53. The first respondent filed Crl.P.No.6856 of 2015, under Section 482 Cr.P.C, on the file of this court, seeking to quash the proceedings in C.C.No.91 of 2013 on the file of the Court of the Judicial Magistrate of First Class, Madakasira, corresponding to Crime No.76 of 2013 on the file of Madakasira Police Station, on 13.7.2015. This clearly indicates that the learned Judicial Magistrate of First Class, Madakasira has taken cognizance of the offences in the year 2013 itself and numbered the charge sheet as C.C.No.91 of 2013. The first respondent submitted Nomination Paper in the month of April 2014. The first respondent himself filed Ex.B.3–Order dated 30.07.2015 passed in Crl.P.M.P.No.6754 of 2015 in Crl.P.No.6856 of 2015. In view of the recitals of Ex.B.3, I am unable to accede to the contention of the learned counsel for

the first respondent that the trial court has not taken cognizance of the offences in Crime No.76 of 2013 as it is nothing but an incongruous contention in order to circumvent the present proceedings.

54. Ex.P.4 is Form-26 submitted by the first respondent to the Returning Officer along with the Nomination Paper. The person, who contests in the elections, has to disclose the pendency of criminal cases against him at column No.5(i) and (ii) of Form-26. As per Clause 5(i), the contesting candidate has to mention the pendency of the criminal cases wherein charges have been framed against him for which the punishment prescribed is 2 years or more. As per Clause 5(ii), the contesting candidate has to furnish information with regard to pendency of criminal cases against him in which the court has taken cognizance of offence other than those offences mentioned in Sub-Clause (i) of Clause 5.

55. For better appreciation of the rival contentions, it is not out of place to extract Clause No.5 of Form-26 (Ex.P.4) submitted by the first respondent to the Returning Officer-11th respondent.

Clause No.5 of Form-26 reads as follows:

5. I am/am not accused of any offence (s) punishable with imprisonment for two years, no case (s) are pending in which a charge (s) has / have been framed by the court (s) of competent jurisdiction.

If the candidate is accused of any such offence (s) he shall furnish the following information:-

(i) The following case (s) is / are pending against me in which charges have been framed by the court for an offence punishable with imprisonment for two years or more:

| | | |
|---|---|---|
| (a) | Case/FIR report No/s together with complete details of concerned Police Station/District /State. | Nil |
| (b) | Section (s) of the concerned Act (s) and short description of the offence (s) for which charge | Nil |

| | | |
|---|---|---|
| (c) | Name of the Court, Case No. And date of order taking cognizance | Nil |
| (d) | Court (s) which framed the charge (s) | Nil |
| (e) | Date (s) on which the charge(s) was/were framed. | Nil |
| (f) | Whether all or any of the proceeding (s) have been stayed by any court (s) of competent jurisdiction. | Nil |

(ii) The following case (s) is /are pending against me in which cognizance has been taken by the Court (other than the cases mentioned in Item (i) above).

| | | |
|---|---|---|
| (a) | Name of the Court, Case No. and date of order taking cognizance. | Nil |
| (b) | The details of cases where the Court has taken cognizance, Section (s) of the Act (s) and description of the offence (s) for which cognizance taken. | Nil |
| (c) | Details of Appeal (s) / Application (s) for revision (if any) filed against the above order (s). | Nil |

56. A perusal of Ex.P.4 clearly demonstrates that the first respondent did not disclose the pendency of above two criminal cases against him as on the date of filing of the Nomination Paper i.e., 16.4.2014 at Column No. 5(i) and 5(ii), which is mandatory.

57. As seen from the testimony of R.W.1 he entrusted the Nomination Paper and Form-26 to the expert to fill the same. His testimony further reveals that he signed Form-26 without knowing the contents of the same. R.W.2 is Notary who notarized the Form-26. As per the testimony of R.W.2, he read over and explained the contents of Form-26 to the first respondent before notarizing the same. As per the testimony of R.Ws.3 to 6 they have filled in the Nomination Papers and Form-26 of the first respondent. Each witness stated that he alone filled Form-26 of the first respondent. It is not possible to fill up one Form-26 by four persons. The witnesses are not in a position to say exactly which witness filled

in the Form-26 and Nomination Paper. R.Ws.3 to 6 in unequivocal terms deposed that they filled in Form-26 as per the instructions of the first respondent. If the testimony of R.Ws.3 to 6 is taken into consideration, the contention of the first respondent that he signed Form-26, without knowing the contents of the same, is improbable and unbelievable. Even otherwise the first respondent submitted Form-26 on oath that he is not an accused in any criminal case. It is the duty of the contesting candidates to verify the contents of Form-26 before submitting the same to the Returning Officer. The plea taken by the first respondent is due to shortage of time, he signed on Form-26 without verifying the contents. The plea taken by the first respondent is not sustainable either on facts or in law. The first respondent cannot blame any body except himself for non-mentioning of pendency of criminal cases against him in Form-26, having admitted the same in his counter. Basing on the material available on record, I have no hesitation to hold that by non-mentioning of pendency of criminal cases in Form-26, the first respondent had violated Section 33A of the R.P. Act. Hence this issue is answered in favour of the petitioner and against the first respondent.

**Issue No.2:**

58. The petitioner has specifically pleaded in the Election Petition that at the time of filing of Nomination Papers by the first respondent, his wife was working as Anganwadi Teacher/worker in C.D.P.O. Office, P.D. Kote Village, Dharmapura Post, Hiriyur Taluk, Chitra Durga District, Karnataka.

59. As per the testimony of P.W.1, the wife of the first respondent has been working as Anganwadi Teacher, more particularly, as on the date of filing of Nomination Paper by the first respondent. His testimony further reveals that the first respondent mentioned the status of his wife as 'house wife' in Form-26.

60. The relevant portion in para No.4 of the counter of the first respondent reads as follows:

> 4. .... it is true that the wife of the first respondent was an employee and at the time of notification of election, she stopped attending her duties and submitted resignation and therefore, it was not mentioned about her employment but mentioned as house wife... ...

61. As per the testimony of R.W.1, his wife worked as Anganwadi worker in C.D.P.O. Office, P.D. Kote Village, Dharmapura Post, Hiriyur Taluk, Chitra Durga District, Karnataka prior to filing of the nomination by him. If the testimony of R.W.1 is taken into consideration, his wife submitted resignation to the said post.

62. As per the testimony of R.Ws.3 to 6, the wife of the first respondent was not working as Anganwadi worker as on the date of filing of Nomination Paper by the first respondent. In the cross examination R.W.6 deposed that as on the date of filing of nomination by the first respondent, his wife was working as Anganwadi worker. Again he stated that by the time of election notification the wife of first respondent resigned as Anganwadi worker. He further deposed that he has seen the resignation acceptance letter of the wife of the first respondent.

63. If the testimony of R.W.6 is taken into consideration, the wife of the first respondent submitted resignation to the post of

Anganwadi worker on or before 16.4.2014. In order to appreciate the contention of the first respondent, it is apposite to extract the relevant portion of his cross examination:

> ".....I do not know whether my wife is getting honorarium of Rs.5,673/- per month as Anganwadi worker. It is not true to say that as on today my wife is working as Anganwadi worker in P.D. Kote village, Dharmapura Post, Hiriyur Taluq, Chitradurga District of Karnataka State. **I did not file copy of resignation letter of my wife in this case. I did not obtain acknowledgement till date indicating that my wife submitted resignation.** I did not file any document in the Court to prove that my wife's resignation was accepted by the competent authority...."

64. A perusal of the above cross examination clearly indicates that the first respondent did not file even a single scrap of paper to establish that his wife either stopped to attend the office or submitted her resignation to the post of Anganwadi worker prior to 16.4.2014. In such circumstances, R.W.6 seeing the resignation acceptance letter of the wife of the first respondent is somewhat improbable and unbelievable. In view of the discrepancy in the testimony of these witnesses, the testimony of R.W.6 is not trustworthy for consideration. The oral testimony of R.Ws.3 to 6 is no way helpful to establish that the wife of the first respondent submitted her resignation to the post of Anganwadi worker, prior to 16.4.2014.

65. As seen from the testimony of P.W.1 he obtained employment particulars of the wife of the first respondent under Right to Information Act. Ex.P.17 is the letter issued by the Public Relation Officer, Child Welfare Department, Hiriyur. Ex.P.18 is the translated copy of Ex.P.17, which reads as under:

GOVERNMENT OF KARNATAKA
CHILD WELFARE DEPARTMENT, HIRIYUR

No./CWDH/RTI/14-15/107, Dt:25.06.2014.

To
S. Hemanth S/o Siddappa
Metikurki Yiriyur Taluka Chitradurga Dist.

Sir,
Sub: Under RTI Act, given the following information:
Ref: Your application dated 25.06.2014.

With relerence to the above, it is mentioned that in Hiriyur Taluka, P.D.Kote No.1, Anganawadi Centre, Smt Shivamma G.A. is working from 20.04.1985 as Anganwadi worker and she is getting a monthly honoray salary payment of rupees as below:

| Details | Rs. |
|---|---|
| Honorary Pay | 3063/- |
| Additional,Hon' Payment | 2500/- |
| Traveling allowance | 50/- |
| Daily allowance | 60/- |
| Total | 5673/- |

Total Rupees Five Thousand Six Hundred Seventy Three only

Sd/-
Public Relation Officer
Right to Information Act, 2005
Child Welfare Department
Hiriyur

66. A perusal of the above clearly indicates that the petitioner submitted the application under Right to Information Act on 25.6.2014. A perusal of Ex.P.18, which is the translated copy of Ex.P.17, clearly indicates that the wife of the first respondent is working as Anganwadi worker and drawing a monthly honorarium of Rs.5,673/-. If really the wife of the first respondent had submitted her resignation on or before 16.4.2014, the same might have been reflected in Ex.P.17. The petitioner has taken a specific stand in the Election Petition that he obtained information about the employment particulars of the wife of the first respondent under Right to Information Act. If the information furnished by the petitioner is not true and correct, what prevented the first

respondent from obtaining the correct information from the Child Welfare Department, Hiriyur, is not explained. For one reason or the other, the first respondent did not take any steps to establish the recitals of Ex.P.17 as not true and correct.

67. It is needless to say that the burden of proof heavily lies on the Election Petitioner to substantiate the stand taken by him. The petitioner, by producing Ex.P.17, has established that the wife of the first respondent was working as Anganwadi worker as on 16.4.2014. Since the first respondent admitted the factum of employment of his wife, the burden of proof shifts on to him to establish that his wife submitted resignation to the said post on or before 15.4.2014 and the same was accepted by the competent authority. In Ex.P.4–Form 26 at column No.9(b), occupation and profession of spouse is mentioned as house-wife. The first respondent also admitted that in Form-26 he has mentioned that his wife is a house-wife. Having regard to the facts and circumstances of the case, I am of the considered view that as on 16.4.2014 the wife of the first respondent was working as Anganwadi worker in C.D.P.O. Office, P.D. Kote Village, Dharmapura Post, Hiriyur Taluq, Chitra Durga District, Karnataka State. The material placed on record clinchingly establishes that the first respondent did not mention the avocation of his wife in Ex.P.4. Hence, issue No.2 is answered in favour of the petitioner and against the first respondent.

**Issue No.3:**

68 The learned counsel for the petitioner submitted that the first respondent did not disclose pendency of criminal cases against him and the avocation of his spouse in Form-26, which would amount to undue influence on the voters. He further submitted that the first respondent intentionally and wilfully concealed factum of pendency of criminal cases against him, thereby violated the statutory and constitutional provisions.

69. Per contra, the learned counsel for the first respondent submitted that non-disclosure of pendency of criminal cases by the first respondent in Form–26 would not attract Section 100 (1) (d) of the R.P. Act, therefore, the Election Petition is liable to be dismissed. He further submitted that the only remedy available to the petitioner is to lodge a criminal complaint under Section 125-A of the R.P.Act. He further submitted that an Anganwadi worker is not a Government servant; therefore, non-disclosure of the avocation of the wife of the first respondent falls outside the purview of Section 33-A of the R.P. Act.

70. In order to appreciate the rival contentions, it is apposite to refer to relevant provisions of the R.P. Act and case law.

71. Prior to 2002 there was no statutory obligation on the part of the contesting candidates to disclose their criminal antecedents in the Nomination Papers. A Public Interest Litigation was filed before the Hon'ble apex Court seeking to issue suitable directions to the Election Commission of India in order to disclose the criminal cases pending against the contesting candidates, thereby

the voters know their background. The Hon'ble apex Court in **Union of India v. Assn. for Democratic Reforms**[10], held at paragraph Nos.47, 48 and 49 as follows:

> 47. In this view of the matter, it cannot be said that the directions issued by the High Court are unjustified or beyond its jurisdiction. However, considering the submissions made by the learned counsel for the parties at the time of hearing of this matter, the said directions are modified as stated below.
>
> 48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his Nomination Paper, furnishing therein, information on the following aspects in relation to his/her candidature:
>
> (1) Whether the candidate is convicted/acquitted/ discharged of any criminal offence in the past—if any, whether he is punished with imprisonment or fine.
>
> (2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.
>
> (3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.
>
> (4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.
>
> (5) The educational qualifications of the candidate.
>
> 49. It is to be stated that the Election Commission has from time to time issued instructions/orders to meet with the situation where the field is unoccupied by the legislation. Hence, the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible and in any case within two months.

72. In pursuance of the directions given by the Hon'ble apex Court in the case cited above, the Parliament made amendments to the R.P. Act, 1951 and included Section 33-A and 33-B, with effect from 28.4.2002. Rule 4-A was included in conduct of Election Rules, 1961, with effect from 03.9.2002.

Section 33-A of the R.P. Act reads as follows:

> **33-A. Right to information.**—(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his Nomination Paper delivered

[10] (2002) 5 SCC 294

under sub-section (1) of Section 33, also furnish the information as to whether—

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3) of Section 8 and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the Returning Officer the Nomination Paper under sub-section (1) of Section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The Returning Officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the Nomination Paper is delivered.

Rule 4A of the Conduct of Election Rules, 1961 as follows:

4A. **Form of affidavit to be filed at the time of delivering Nomination Paper.-** The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the Nomination Paper under sub-section (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26.

73. A perusal of Section 33-A of the R.P. Act, mandates that the candidate shall file an affidavit disclosing his involvement (i) in any criminal case, which is punishable with imprisonment for two years or more; and (ii) if he was convicted and sentenced to suffer imprisonment for one year or more. It is not the case of the petitioner that first respondent was convicted in any criminal case and was sentenced to suffer imprisonment for a period of one year or more; therefore, the provisions of Section 33-A(1)(ii) of the R.P. Act are not applicable to the facts of the case on hand.

74. A conjoint reading of sub-clause (2) of Section 33-A of the R.P. Act and Rule 4A of Conduct of Election Rules mandates that a contesting candidate shall submit sworn affidavit along with the

Nomination Paper. On receipt of the Nomination Papers and affidavits in Form-26 from the contesting candidates, Returning Officer has to affix the copy of the affidavit at a conspicuous place in his office. The Parliament incorporated Section 33-A in the R.P. Act with a laudable object of enlightening the voters about the criminal antecedents of the candidates contesting in their respective Constituencies, thereby to choose the candidate of their choice. The voters have a fundamental right to know the full details of the candidates contesting in their Constituency. Non-disclosure of such statutory information by any contesting candidate would certainly amount to depriving the voters from exercising their franchise freely and fairly. The underlying object of Section 33-A of the R.P. Act is to eradicate criminalisation in politics so as to build value-based society. Non-exercising of the franchise by the voters freely and fairly due to non-disclosure of statutory information by the contesting candidates would undoubtedly amount to undue influence. Whether undue influence of the voters is one of the facets of corrupt practice or not will be dealt with latter.

75. If any candidate or his election agent resorts to corrupt practice, certainly the election of the returning candidate is liable to be set aside. Whether the facts pleaded and proved by the petitioner will fall within the ambit of Section 100 of the R.P. Act or not, is a crucial question to be considered by this Court. Section 100(1)(d) of the R.P Act reads as follows:

> **100. Grounds for declaring election to be void.**- (1) Subject to the provisions of Sub-section (2) if the High Court is of opinion-
> (a) x x x x x

(b) x x x x x
(c) x x x x x
(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.

76. Section 100 (1) (d) of the R.P. Act encompasses in it improper acceptance of nomination, corrupt practice resorted by the candidate or his agent and non-compliance of the constitutional provisions or provisions of the R.P. Act or Rules made thereunder.

77. To substantiate the argument, the learned counsel for the petitioner has drawn attention of this court to the following decisions:

**Kisan Shankar Kathore v. Arun Dattatray Sawant**[11], wherein the Hon'ble apex Court held at para graph Nos.40 and 43 as follows:

> 40. We have already reproduced above the relevant portions of judgments in *Assn. for Democratic Reforms* [*Union of India* v. *Assn. for Democratic Reforms*, (2002) 5 SCC 294] and *People's Union for Civil Liberties* [*People's Union for Civil Liberties* v. *Union of India*, (2003) 4 SCC 399] and the guidelines issued by the Election Commission pursuant thereto. A conjoint and combined reading thereof clearly establishes that the main reason for issuing directions by this Court and guidelines by the Election Commission pursuant thereto is that the citizens have fundamental right under Article 19(1)(*a*) of the Constitution of India to know about the candidates contesting the elections and this is the primary reason that casts a solemn obligation on these candidates to furnish information regarding the criminal antecedents, educational qualifications and assets held by the candidate, his spouse and dependent children. It is on that basis that not only the Election Commission has issued guidelines, but also prepared formats in which the affidavits are to be filed. As a fortiori, it follows that if the required information as per the said

[11] (2014) 14 SCC 162

format in respect of the assets of the candidate, his wife and dependent children, is not given, it would amount to suppression/non-disclosure.

43. When the information is given by a candidate in the affidavit filed along with the Nomination Paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the returning officer at that time to conduct a detailed examination. Summary enquiry may not suffice. Present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms. Meenakshi Arora, learned senior counsel appearing for the Election Commission, rightly argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination. Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section 125A of the Act can be initiated and the selected candidate is criminally prosecuted and convicted, but the result of his election cannot be questioned. This cannot be countenanced.

**Resurgence India** (3rd cited supra), wherein it was held at paragraph No.29.4 as follows:

29. *What emerges from the above discussion can be summarised in the form of the following directions:*

29.4. It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the Nomination Paper since such information is very vital for giving effect to the "right to know" of the citizens. **If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the Nomination Paper is fit to be rejected.** We do comprehend that the power of the Returning Officer to reject the Nomination Paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.

**Krishnamoorthy v. Sivakumar**[12], wherein it was held at paragraph Nos.91 and 94 as follows:

> 91. The purpose of referring to the instructions of the Election Commission is that the affidavit sworn by the candidate has to be put in public domain so that the electorate can know. If they know the half truth, as submits Mr.Salve, it is more dangerous, for the electorate is denied of the information which is within the special knowledge of the candidate. When something within special knowledge is not disclosed, it tantamounts to fraud, as has been held in *S.P. Chengalvaraya Naidu* v. *Jagannath*, (1994) 1 SCC 1. **While filing the nomination form, if the requisite information, as has been highlighted by us, relating to criminal antecedents, is not given, indubitably, there is an attempt to suppress, effort to misguide and keep the people in dark. This attempt undeniably and undisputedly is undue influence and, therefore, amounts to corrupt practice.** It is necessary to clarify here that if a candidate gives all the particulars and despite that he secures the votes that will be an informed, advised and free exercise of right by the electorate. That is why there is a distinction between a disqualification and the corrupt practice. In an election petition, the election petitioner is required to assert about the cases in which the successful candidate is involved as per the rules and how there has been non-disclosure in the affidavit. **Once that is established, it would amount to corrupt practice.** We repeat at the cost of repetition, it has to be determined in an election petition by the Election Tribunal.
>
> 94. In view of the above, we would like to sum up our conclusions:
>
> 94.1. Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of Nomination Paper as mandated by law is a categorical imperative.
>
> 94.2. When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.
>
> **94.3. Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.**
>
> 94.4. As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(*b*) of the 1951 Act.
>
> 94.5. The question whether it materially affects the election or not will not arise in a case of this nature.

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[12] (2015) 3 SCC 467

78. As per the principle enunciated in the cases cited supra, non-disclosure of the criminal antecedents in Form–26 amounts to violation of Section 33-A of the R.P Act. After inclusion of Section 33-A, every voter is entitled to know the antecedents of all the contesting candidates in view of Article 19(1)(a) of the Constitution of India. Undoubtedly non-disclosure of criminal antecedents in Form–26 by the contesting candidates would amount to violation of the constitutional and statutory provisions; such an act would amount to undue influence on the voters, which eventually falls within the ambit of 'corrupt practice'.

79. The learned counsel for the first respondent has drawn the attention of this court to the decision in **C.P. John v. Babu M. Palissery**[13], wherein the Hon'ble apex Court held at paragraph No.46 as follows:

> 46. ... ... Under Section 33-A(1)(*ii*) of the Act, the requirement of the candidate is to furnish the information in the nomination as regards his/her conviction for any offence referred to in sub-sections (1), (2) and (3) of Section 8 and if he/she is sentenced to imprisonment for a period of one year or more, only then should it be disclosed in the nomination. As it has been found in the present case that the conviction in CC No. 167 of 1995 and the sentence imposed was less than a year, there was no compulsion for the first respondent to disclose the said conviction in his nomination. Therefore, on this ground when the High Court declined to interfere with the election of the first respondent, no fault can be found with the said conclusion.

80. As per the principle enunciated in the case cited supra, if the contesting candidate was convicted and sentenced to undergo imprisonment for a period less than one year, there is no necessity to mention the same in Form-26. In the instant case, the first respondent is an accused for an offence punishable more than two years. Under this issue, what the court has to take into

[13] (2014) 10 SCC 547

consideration is whether the first respondent has disclosed his criminal antecedents at Column No.5(i) and 5(ii) of Form-26 or not, but not whether or not he has suffered imprisonment for two years or more in any case. Admittedly, the first respondent did not disclose the pendency of the criminal case in which the competent criminal court has taken cognizance of the offence. So it is nothing but suppression of material fact. The facts of the case on hand are distinguishable with the facts of the case cited supra. Hence this decision is no way helpful to substantiate the stand of the first respondent.

81. The learned counsel for the first respondent strenuously submitted that the petitioner miserably failed to prove that the result of the election of the first respondent has been materially affected; therefore, the Election Petition is liable to be dismissed. To substantiate the stand, he has drawn the attention of this Court to the decision in **Santosh Yadav** case (7th cited supra) wherein the Hon'ble Apex Court held at para No.8 as follows:

> 8. It is well settled by a catena of decisions that the success of a winning candidate at an election should not be lightly interfered with. This is all the more so when the election of a successful candidate is sought to be set aside for no fault of his but of someone else. That is why the scheme of Section 100 of the Act, especially clause (*d*) of sub-section (1) thereof clearly prescribes that in spite of the availability of grounds contemplated by sub-clauses (*i*) to (*iv*) of clause (*d*), the election of a returned candidate shall *not* be avoided unless and until it was proved that the result of the election, insofar as it concerns *a returned candidate was materially affected.*

**Harsh Kumar v. Bhagwan Sahai Rawat**[14], wherein the Hon'ble apex Court held at paragraph No.7 as follows:

> 7. It has again been reiterated by this Court that the success of a winning candidate at a election should not be lightly interfered with. This is all the more so when the election of a successful

[14] (2003) 7 SCC 709

> candidate is sought to be set aside for no fault of his but of someone else. That is why, the scheme of Section 100 of the Act, especially clause (*d*) of sub-section (1) thereof clearly prescribes that in spite of the availability of grounds contemplated by sub-clauses (*i*) to (*iv*) of clause (*d*), the election of a returned candidate shall not be voided unless and until it is proved that the result of the election, insofar as it concerns a returned candidate was materially affected.

**Ram Sukh v. Dinesh Aggarwal**[15] wherein Hon'ble apex Court held at paragraph No.21 as follows:

> 21. We may now advert to the facts at hand to examine whether the election petition suffered from the vice of non-disclosure of material facts as stipulated in Section 83(1)(*a*) of the Act. As already stated the case of the election petitioner is confined to the alleged violation of Section 100(1)(*d*)(*iv*). For the sake of ready reference, the said provision is extracted below:
>
> "100. *Grounds for declaring election to be void.*—(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—
>
> ***
>
> (*d*) that the result of the election, insofar as it concerns a returned candidate, has been materially affected—
>
> ***
>
> (*iv*) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void."
>
> It is plain that in order to get an election declared as void under the said provision, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected.

82. As per the principle enunciated in the cases cited supra, the petitioner has to establish that the result of the election, in so far as it concerns the returned candidate, was materially affected, in order to set aside the same.

83. The crucial question that falls for consideration, in the case on hand is whether the petitioner has to establish that the election result of the first respondent was materially affected.

84. In order to resolve the issue, this court is placing reliance on the following decisions:

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[15] (2009) 10 SCC 541

(i) **M. Narayana Rao v. G. Venkata Reddy**[16] wherein the Hon'ble apex Court held at Para No.17 as follows:

> 17. In view of the above discussion, I hold that the acts of 'corrupt practice' were committed by the persons abovenamed with the consent of the first respondent and therefore the election of the first respondent is liable to be declared void under Section 100 (1) (b) of the Act. His election is also liable to be declared void because his election agent, R W13 is found guilty of corrupt practice of undue influence. The election of the first respondent is liable to be declared void without the further proof that the result of the election has been materially affected.....

(ii) **Krishnamoorthy** case (13th cited supra) wherein the Hon'ble apex Court held at para Nos.94.4 and 94.5 as follows:

> 94. In view of the above, we would like to sum up our conclusions:
>
> 94.4. As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(*b*) of the 1951 Act.
>
> 94.5. The question whether it materially affects the election or not will not arise in a case of this nature.

85. As per the principle enunciated in the cases cited supra, if the Election Petitioner establishes the corrupt practice resorted to by the returned candidate or failure on the part of the returned candidate to furnish the information as contemplated under Section 33-A of the R.P. Act, the question whether the result of the returned candidate was materially affected or not is not a relevant factor to set aside the election of the returned candidate. Hence the submission made by the learned counsel for the first respondent has no legs to stand.

86. The learned counsel for the first respondent submitted that non-disclosure of criminal cases by the first respondent would attract Section 125-A, but not Section 100 of the R.P Act. To

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[16] (1977) 1 SCC 771

substantiate the same, he has drawn attention of this court to **Resurgence India** case (3rd cited supra) wherein the Hon'ble apex Court held at paragraph Nos.26 and 27 as follows:

> 26. At this juncture, it is vital to refer to Section 125A of the RP Act. As an outcome, the act of failure on the part of the candidate to furnish relevant information, as mandated by Section 33A of the RP Act, will result in prosecution of the candidate. Hence, filing of affidavit with blank space will be directly hit by Section 125A(i) of the RP Act. However, as the Nomination Paper itself is rejected by the Returning officer, we find no reason why the candidate must again be penalized for the same act by prosecuting him/her.
>
> 27. If we accept the contention raised by Union of India, viz., the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank should be treated at par, it will result in breach of fundamental right guaranteed under Article 19(1)(a) of the Constitution, viz., 'right to know', which is inclusive of freedom of speech and expression as interpreted in Association for Democratic Reforms (supra).

87. As per the principle enunciated in the case cited supra, a candidate cannot be prosecuted under Section 125 A of the R.P. Act if his Nomination Paper was once rejected by the Returning Officer. Having regard to the facts and circumstances of the case, this Court is of the considered view that this decision is no way helpful to the case of the first respondent.

88. The learned counsel for the first respondent submitted that an Anganwadi worker is not a Government servant, therefore, non-disclosure of the avocation of the wife of the first respondent will not attract Section 33-A of the Act. To substantiate the argument, the learned counsel has drawn attention of this Court to the ratio laid down in **State of Karnataka v. Ameerbi**[17]. As per the principle enunciated in the case cited supra, an Anganwadi worker is not a Government servant. Here the question involved is whether

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[17] (2007) 11 SCC 681

the first respondent has disclosed the avocation of his wife or not. Whether the wife of the first respondent is a Government servant or not has no relevance so far as disclosing of the information as contemplated under Section 33-A of the R.P. Act is concerned. As observed earlier, spouse's avocation or profession is to be filled in Clause 9(b) of Form–26. Admittedly the first respondent has not mentioned the avocation of his wife in clause 9(b) of Form-26. Hence this decision is no way helpful to the case of the first respondent.

89. The petitioner has taken a specific plea in the petition that the first respondent has kept Column No.2 in Form-26 blank. The first respondent filed counter denying all the averments made in the petition in general way but has not taken a specific plea in the counter that he has filled in Column No.2 of Form–26. In order to appreciate the rival contentions, it is apposite to extract Column No.2 in Form–26, Ex.P.4, which reads as follows:

> (2) My name is enrolled in ..... (Name of the constituency and the State), at Serial No ..... in Part No .....

90. A perusal of the above reveals that the first respondent kept Column No.2 blank. Due to non-taking of the objection by the petitioner, at the time of scrutiny of the nominations, the Returning Officer might not have noticed the same. The attested copy of Ex.P.4, Form–26 of the first respondent, clearly demonstrates that the first respondent has not filled in column No.2 in Form–26 wherein he has to mention that he is a voter of a particular constituency and his name was enrolled at particular Serial Number in the voters' list. Filing of nomination with blanks

will fall within the ambit of Section 33(1) and Section 33-A of the R.P. Act. It is not out of place to extract hereunder Para No.25 of the decision in **Resurgence India** case (3rd cited supra).

> 25. Para 73 of the aforesaid judgment in *People's Union for Civil Liberties case* [*People's Union for Civil Liberties* v. *Union of India*, (2003) 4 SCC 399] nowhere contemplates a situation where it bars the Returning Officer tc reject the Nomination Paper on account of filing affidavit with particulars left blank. Therefore, we hereby clarify that the above said paragraph will not come in the way of the Returning Officer tc reject the Nomination Paper if the said affidavit is filed with blank columns. The candidate must take the minimum effort to explicitly remark as "NIL" or "Not Applicable" or "Not known" in the columns and not to leave the particulars blank, if he desires that his Nomination Paper be accepted by the Returning Officer.

91. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the first respondent did not disclose the information relating to Column Nos.2, 5 (i), 5 (ii) and 9 in Form-26-Ex.P.4, which act of the first respondent will fall within the ambit of Section 100(1)(d) of the R.P. Act. Hence, issue No.3 is answered in favour of the petitioner and against the first respondent.

**Additional Issue:**

92. The facts pleaded and proved by the petitioner, in Issue Nos.1 to 3, will fall within the ambit of Section 100(1)(d) of the R.P Act. Hence, the election of the first respondent as Member of 275-Madakasira Legislative Assembly Constituency held in the month of May 2014, is declared as illegal and void; therefore, it is liable to be set aside. Accordingly, the additional issue is answered.

**Issue No.4:**

93. The petitioner clearly pleaded in the Election Petition to declare the election of the first respondent as null and void, and declare him as elected candidate. In order to appreciate the

contention of the petitioner, it is not out of place to extract hereunder Section 84 of the R.P.Act.

> **84. Relief that may be claimed by the petitioner:-** A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected.

94. Section 84 enables the petitioner to seek a declaration to declare him as elected candidate in case the election of the returning candidate was declared as void. The relief sought by the petitioner falls within the ambit of Section 84 of the R.P.Act.

95. As observed earlier, the first respondent got 76,601 votes and the petitioner got 61,965 votes. The first respondent was declared as elected Member of 275-Madakasira Legislative Assembly Constituency with a majority of 14,636 votes. Among all the candidates contested, the petitioner secured highest votes after the first respondent. Consequent upon the findings on Additional Issue, the petitioner is entitled to be declared as elected Member of 275-Madakasira Legislative Assembly Constituency. Accordingly, issue No.4 is answered in favour of the petitioner and against the first respondent.

**Issue No.5**:

96. In the result, the Election Petition is allowed, setting aside the election of the first respondent as Member of 275-Madakasira Legislative Assembly Constituency in the General Elections held in the month of May, 2014 and declaring the petitioner as duly elected Member of 275-Madakasira Legislative Assembly Constituency. Both the parties are directed to bear their own

costs. Miscellaneous petitions, if any pending in the Election Petition, shall stand closed.

**T. VENKATESWARA RAO,**
Joint Registrar.

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